

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS DIV.

2011 SEP 30 PM 12 08

PATRICK E. DUFFY, CLERK
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BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)
OF THE INTERNATIONAL)
BROTHERHOOD OF TEAMSTERS,)

Plaintiff,)

v.)

PAUL GREEN, and THE MONTANA)
DEPARTMENT OF LABOR &)
INDUSTRY, HUMAN RIGHTS)
BUREAU,)

Defendants.)
_____)

Cause No. CV-11-35-BLG-RFC

ORDER

ADOPTING FINDINGS AND

RECOMMENDATIONS OF U.S.

MAGISTRATE JUDGE

Magistrate Judge Ostby has entered Findings and Recommendations with respect to motions to dismiss filed by Defendants Human Rights Bureau (*doc. 5*) and Paul Green (*doc. 8*). Magistrate Judge Ostby recommends that the Human Rights Bureau's motion be granted because it is immune from suit under the Eleventh Amendment, and BMWED's failure to name an individual state officer as a defendant means the *Ex Parte Young* exception for suits seeking prospective injunctive relief is unavailable. *Doc. 19, pp. 7-8*. Magistrate Judge Ostby

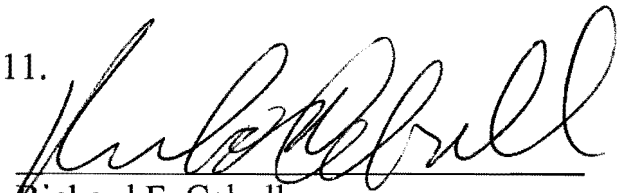
recommends that Green's motion be denied because this Court has obvious federal question jurisdiction over the claims against Green. *Id. at pp. 8-9.*

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the Findings and Recommendation. Although this failure to object waives all objections to the findings of fact, *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999), it does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After a thorough review of the Findings and Recommendations, the parties' briefs, and the applicable law, the Court concludes Magistrate Judge Ostby's recommendations are well-grounded in law and fact and are adopted in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that HRB's motion to dismiss (*doc. 5*) is **GRANTED** and Green's motion to dismiss (*doc. 8*) is **DENIED**.

Dated this 29th day of September, 2011.


Richard F. Cebull
United States District Judge